IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 2837 OF 1995
With
CIVIL APPLICATION NO. 1674 OF 2003
In
SPECIAL CIVIL APPLICATION NO. 2837 OF 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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NATIONAL INSURANCE COMPANY LIMITED - Petitioner(s)
Versus
GIRISH J. PATEL DECEASED THROUGH HIS HEIRS & ORS. - Respondent(s)

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Appearance :
Ms. Megha Jani for Petitioner(s).
Ms. Moksha Thakker with Shri S. D. Suthar for Respondents.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 26/07/2007 & 27/07/2007

ORAL JUDGMENT

The parties are finally heard. As the matter is heard finally,

the orders on Civil Application No.1674 of 2003 are not required. The said application stands disposed of.

2. The petitioner-Insurance Company, being aggrieved by the award dated 15th December, 1994 passed by the learned Central Industrial Tribunal, Gujarat in Reference (ITC) No.20 of 1988, has filed this petition under Article 227 of the Constitution of India, challenging the correctness, validity and propriety of the award.

3. The short facts necessary for disposal of the present Writ Application are that one Girish J. Patel (since deceased) was appointed as a Trainee Inspector on 14th August, 1974 with the petitioner-Company and was thereafter, categorised as Inspector (Grade-I). As Inspector (Grade-I), he was entitled to receive premium, issue necessary cover notes and cover risks. On 17th April, 1978, fire broke in the premises of one insured and after the claim was lodged, the Insurance Company learnt that in fact, the cover note dated 15th April, 1978 was antedated or was to help and assist the alleged insured firm. After making the preliminary inquiry, the deceased employee was placed under suspension and was charge-sheeted on 19th September, 1980. The proceedings continued and ultimately, on 17th February, 1983, the disciplinary authority recorded its findings against the interest of the employee. The employee was terminated from the services. The matter

was ultimately referred to the learned Industrial Tribunal.

3.1 The learned Industrial Tribunal, while hearing the question that whether non-supply of copy of the cover notes to the delinquent would vitiate the disciplinary proceedings, held that the disciplinary proceedings were vitiated, however, at the request of the petitioner-Insurance Company, it provided an opportunity to the petitioner to substantiate the allegations in the Court. The petitioner brought the evidence that the document was antedated. It was contended by them that the cover note could not be issued on 15th April, 1978 because the premium came to be deposited with the cashier of the Company on 18th April, 1978. It was also submitted that if the money was received by the deceased employee on 15th April, 1978, then, he was obliged to deposit the money with the cashier on 17th April, 1978. The evidence was also produced to prove that the defence of the employee that he came to the office at about 4:30 p.m. on 17th April, 1978, was patently wrong in view of interpolations made by the employee in the attendance register. According to them, the employee had come to his work place at about 10:30 a.m., but, later on, made interpolations to show that he came to the office at about 4:30 p.m. and finding that the Accounts Section had closed, he could not deposit the money. They also submitted that issue of the cover notes was not in dispute, therefore, non-supply of copy of the same would not vitiate the trial and as the matter was decided after

providing proper opportunity to the delinquent, the learned Industrial Tribunal was not required to interfere in the matter.

3.2 The employee appeared before the learned Tribunal and submitted that the cover note was issued after receiving the premium, but, as the money was received at about 2:30 p.m. on Saturday, after close of the accounts, the money could not be deposited on the same day. For 16th April, 1978, it was submitted that being Sunday, the money could not be deposited. For 17th April, 1978, it was submitted that the employee came to the office after 4:30 p.m. and as the accounts were closed, he could not deposit the money. It was, however, submitted that the copy of the cover note was produced before the authority on 17th April, 1978, therefore,the cover-note could not be held to be a forged document.

3.3 The learned Industrial Tribunal, ultimately, held that the departmental proceedings stood vitiated and as the original cover notes were not produced before it, no punishment could be awarded to the workman. It would be worth noting that photostat copies of the cover notes were produced in the evidence, genuineness and correctness of the said photostat copies were never challenged by the present respondent.

4. Ms. Megha Jani, learned Counsel for the petitioner,

submitted that if issuance of the cover note was not in dispute, but, the dispute only was that whether the cover note was issued after receiving the money or it was antedated, then, the learned Tribunal below should have confined itself to the said issue and could not draw adverse inference against the petitioner on the ground that the cover notes were not produced in the Court. She also submitted that the issue relating to the cover note was only in dispute and the respondent-workman had come to the Court with a submission that he had issued the cover note after receiving the money. She submitted that no adverse inference could be drawn against the petitioner-Insurance Company firstly, because the original cover notes were not produced and secondly, in view of the fact that photostat copies of the cover notes were produced in the Court.

5. Ms. Moksha Thakker and Shri S.D. Suthar, learned Counsel for the respondents, on the other hand, submitted that the learned Industrial Tribunal had absolute jurisdiction to decide the question of facts and as in the present case, the Court has drawn adverse inference against the petitioner and had recorded positive findings into the innocence of the respondent, this Court under Article 227 of the Constitution of India should not interfere in the matter. She also placed reliance upon a judgement of the Supreme Court in the case of ***Narender Mohan Arya vs. United India Insurance Co. Ltd. & Ors.***,

reported in ***JT 2006 (4) SC 404***, and contended that in almost similar situation, the employee was directed to be reinstated. She submitted that in view of death of the employee, the learned Tribunal below was justified in making the award for back-wages.

6. After hearing the parties, I am of the opinion that the judgement in the matter of ***Narender Mohan Arya*** (*supra*) would at all not be applicable to the facts of the present case. In the said matter, the dispute before the authority was that whether the cover note issued by the agent/inspector was a forged document or not. The authority found that it was a forged document and the appeal against the said order came to be dismissed. However, the insured had filed a suit for recovery of money against the Insurance Company, the suit was decreed and the appeal against the said judgement was also dismissed and the matter was allowed to take rest. After the appeal was dismissed, the employee had filed memorial to the Company with a submission that in view of the findings recorded by the competent Civil Court that the cover note was not forged, he deserves to be reinstated. The Apex Court on the facts of the said case held that the findings recorded by the Civil Court would bind the Insurance Company and if the findings were that the cover note was not forged and was a genuine piece of document, the memorial could not be rejected.

Present is not a case where any Court other than the Industrial Court has decided against the interest of the Insurance Company.

7. In the present matter, true it is that the copies of the cover notes were not supplied to the respondent, nor inspection of the originals was given to the respondent, but, the same was not going to make any difference because it was undisputed between the parties and it was the case of the respondent himself that he had issued the cover note on 15th April, 1978. If the respondent was the author of the cover note, then, he could not say that non-inspection or non-production of the cover note had adversely affected his defence and it would vitiate the findings of the inquiry or would vitiate the inquiry proceedings.

8. Not only this, the photostat copies of the cover-notes were produced during the course of trial; the present respondent did never raise any objection into the admissibility of the photostat copies of the cover notes, nor ever said that the cover notes were interpolated or the cover notes were not the documents which were made and issued by the respondent. If the cover note was not under challenge, nor the accuracy or genuineness of the photostat copy of the cover note was ever challenged, then, the learned Industrial Tribunal below, in the

considered opinion of this Court, was absolutely unjustified in holding that non-production of the original cover notes would lead to adverse inference against the interest of the petitioner.

9. Before I could proceed to decide the matter on merits, the learned Counsel for the respondent submitted that as the learned Court below had passed its judgement on the said adverse inference drawn by it for non-production of the original cover note, the matter be remanded to the learned Industrial Tribunal for decision afresh.

10. After hearing the parties, on the question of remand, I hold that the prayer made by the respondent is justified. For the reasons stated aforesaid, I set aside the judgement and award made by the learned Court below and hereby direct that the matter stands remanded to the learned Industrial Tribunal for its decision afresh on merits on the strength of the evidence available before it. It is, however, made clear that the Court below would not be entitled to draw adverse inference against the petitioner because of non-production of the originals of the cover note. The question before the learned Industrial Court only would be whether the money was received on 15th April, 1978, the cover note was issued on 15th April, 1978 and the money could not be deposited upto 18th April, 1978 either because the money was received on 15th April, 1978 after the accounts hours or because the respondent came to

the office after 4:30 p.m. on 17th April, 1978 and whether there was any interpolation in the attendance register.

11. It is made clear that the matter will have to be decided on the strength of the evidence available on record and the parties would not be entitled to lead any further evidence.

12. The parties present in this Court are directed to appear before the learned Industrial Tribunal on 30th August, 2007. It shall be the duty of the parties to file a copy of this order before the learned Industrial Tribunal enabling it to know as to what it is required to do. The learned Industrial Tribunal shall finally decide the matter within a period of four months from the date of appearance of the parties.

13. The petition is allowed to the extent indicated above. Rule is made absolute. No costs.

Date: 27/07/2007

14. In accordance with the directions of this Court, the petitioner had deposited a sum of Rs.1,50,000/- with the Registry of the High Court. The said amount if had been invested in any Scheme or Fixed Deposit Receipt (FDR), then, the same be refunded to the petitioner with interest as earned on that amount and in case, it is lying in the account of the High Court, only then, the original amount will be

refunded.

[R.S.Garg, J.]

*kamlesh**